(23)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 810

GEORGE W. TALBOTT,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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SUBJECT INDEX.

TABLE OF AUTHORITIES CITED.

CASES.

STATUTES.

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To the Honorable Harlan F. Stone, Chief Justice of the Supreme Court of the United States, and to the Honorable Associate Justices Thereof:

Opinion Below.

The opinion below is reported in 65 A. C. A. (No. 12), September 15, 1944, at page 925.

Jurisdiction of This Court.

Jurisdiction of this Court is conferred by Title 28, section 344, United States Codes, and Article III, section 2, clause 1 of the United States Constitution.

The decision of the District Court of Appeal was rendered September 5, 1944. A petition was thereafter filed in the Supreme Court of the State of California on September 27, 1944, and denied by that Court on October 5, 1944. The District Court of Appeal of the State of California, Second Appellate District, Division One, was therefore the highest Court of the State of California to which said appeal could be taken and a decision had thereon.

Short Statement of the Case.

The appellant was vice-president of and attorney for two corporations, the Kendon Petroleum Corporation and the Wesco Corporation. Both of these corporations were engaged in machine shop work.

The president of these corporations, John L. Allen, and petitioner were charged by an indictment with grand theft in connection with the purchase of and loans on various machinery for the corporations. Appellant did not receive any of the funds, or any of the loans, or have anything to do with the same except in his capacity as the attorney for the corporations, in which capacity he prepared certain documents for the corporations and for Allen to sign. It is by reason of his part as the attorney and in the preparation of these documents that he was charged with grand theft.

The trial court granted a motion for a new trial as to four counts of the indictment but denied the motion as to

three counts and it is from the judgments pronounced against him on three counts that appellant appeals.

Appellant was convicted purportedly by reason of his having "aided and abetted" the principal, Allen having participated in the making out of the papers involved in the transactions.

Issues Presented by This Appeal.

1. Where a state does not have a separate statute designating "aiders and abettors" as being guilty of the offense of aiding and abetting, may the Court, without such a statute, try and sentence a person as a principal by reason of an arbitrary statute making an "aider and abettor" a principal?

2. Where an accused attorney merely makes out papers in the course of his legal obligations for a corporation of which he is the vice-president and the attorney, do his acts in making out the papers for the president of the corporation make him a principal of the crime of grand theft?

3. Where there is no charge of conspiracy in the state law can one be convicted of a substantive crime when that conviction could only rest upon proof of a "conspiracy"?

Cases Believed to Support Jurisdiction.

Jones v. Opelika, 316 U. S. 584, 624, 86 L. Ed. 1692;

De Jonge v. Oregon, 299 U. S. 353, 81 L. Ed. 278;

Hague v. Committed for Industrial Organization, 307 U. S. 496, 515, 83 L. Ed. 1423;

Whitney v. California, 274 U. S. 357, 362, 71 L. Ed. 1095;

Stromberg v. California, 283 U. S. 359, 368, 75 L. Ed. 1117, 1122;

Herndon v. Lowrey, 301 U. S. 242, 81 L. Ed. 1066;

Cantwell v. Conn., 310 U. S. 296, 84 L. Ed. 1213;

Lovell v. Griffin, 303 U. S. 444, 82 L. Ed. 949;

Thornhill v. Alabama, 310 U. S. 88, 85 L. Ed. 1093;

United States v. Falcone, 109 Fed. (2d) 579.

Respectfully submitted,

GEORGE W. TALBOTT,

Pro Se.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

There is no substantive offense of "aiding and abetting" in the State of California. It is only by reason of a statute in the California Penal Code, sections 30 and 31, that appellant could be prosecuted at all. These sections are as follows:

"Sec. 30. Classification of parties to crime. The parties to crimes are classified as:

"1. Principals; and,

"2. Accessories."

"Sec. 31. Who are principals. All persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, *or aid and abet in its commission,* or, not being present, have advised and encouraged its commission, and all persons counseling, advising, or encouraging children under the age of fourteen years, lunatics or idiots, to commit any crime, or who, by fraud, contrivance, or force, occasion the drunkenness of another for the purpose of causing him to commit any crime, or who, by threats, menaces, command, or coercion, compel another to commit any crime, are principals in any crime so committed."

Can the State of California classify arbitrarily all persons as principals, even though they do nothing as principals in the offense charged? It is respectfully submitted that sections 30 and 31, inherently and as construed and applied in this case, are unconstitutional and in violation of the Fourteenth Amendment to the Constitution of the United States, in that they arbitrarily and capriciously classify "all persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, or, not being present, have advised and encouraged its commission," as principals. It does not matter how the person is concerned under this statute. The statute says "if he is concerned" he thus becomes a principal. His concern may be ever so remote,

and, as in the case of this appellant, he may be acting as a lawyer for a corporation in the mere preparation of papers, but under the statute he becomes "concerned" and thus becomes a felon.

It is respectfully submitted that such arbitrary classification violates due process of law guaranteed by the Fourteenth Amendment. (*Tot v. United States*, 87 L. Ed. 504, and cases therein cited.)

II.

Appellant was further denied due process of law in that he was convicted of acts and transactions which were not made out. Such a conviction is sheer denial of due process of law.

Thornhill v. Alabama, 310 U. S. 88, 85 L. Ed. 1093;

De Jonge v. Oregon, 299 U. S. 353, 81 L. Ed. 278.

Respectfully submitted,

GEORGE W. TALBOTT,

Pro Se.